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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1994

Addendum

ARMENIA

[21 December 1995]

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Introduction

1. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified by the Republic of Armenia on 9 July 1993 and entered into force on 23 September 1993.

2. The national report of the Republic of Armenia on the application of the provisions of the Convention in Armenia was drawn up in the light of information received from the Ministry of Justice, the Ministry of the Interior and the Supreme Court in accordance with the provisions of article 19, paragraph 1, of the Convention.

3. Since its independence, the Republic of Armenia has carried out far-reaching legislative reforms aimed at providing legal guarantees concerning respect for individual rights and fundamental freedoms. The new Constitution of the Republic of Armenia, adopted on 5 July 1995 attaches considerable importance to human rights and fundamental freedoms and explicitly prohibits the use of torture and other cruel, inhuman or degrading treatment or punishment. The transitional period has not yet ended: some legislative texts adopted in the time of the former Union of Soviet Socialist Republics are still in force in so far as they are compatible with the Declaration of Independence and in cases in which they have not been superseded by the adoption of new texts.

4. The Armenian legal system does not recognize the practice of torture or other cruel, inhuman or degrading treatment as explicit offences. However, the inadmissibility of such conduct is evident from the provisions of the Penal Code. Several amendments have been made to the criminal law. Some acts have been depenalized and measures have been taken to ensure better protection for accused persons and detainees. The new Penal Code that is being discussed by Parliament is expected to bring about a profound change in the attitude of judicial institutions towards accused persons and detainees.

5. Having ratified the Convention, the Republic of Armenia has an obligation to incorporate the provisions of the Convention in its domestic law. However, until they have been fully incorporated therein, the rights and freedoms of individuals are protected by the International Covenant on Civil and Political Rights, which was ratified by Armenia in April 1991. The Covenant takes precedence over national laws and citizens of the Republic can invoke its provisions before the courts and administrative bodies.

6. The Republic of Armenia has ratified 15 of 25 international conventions concerning human rights. The International Covenant on Civil and Political Rights has already been applied directly by the Supreme Court of the Republic.

7. The courts and the Government Procurator are the authorities competent to examine matters covered by the Convention. A similar obligation is also borne by the police authorities responsible for the defence and security of citizens and, in particular, by the Department of Correctional Work at the Ministry of the Interior. Any citizens who have been subjected to torture or other humiliating, inhuman or degrading treatment have the right to lodge a complaint with the hierarchically higher body, and also with the public prosecutor and the courts.

8. Following the ratification of the Convention, the Supreme Court of the Republic of Armenia adopted a decision concerning "judicial practice in regard to the application of the legislation guaranteeing the rights of defence of suspects and accused persons". In that decision, the Court clarified various points concerning the rights of defence that must be respected by the authorities responsible for judicial investigations and also by the courts.

9. In the time of the Soviet regime, there were cases of unjustified arrests and assault and battery by the police. On 14 June 1994, the Parliament of the Republic of Armenia adopted the "Act concerning Victims of Repression". Under that Act, convictions for political reasons, unlawful convictions, the use of medical methods and deportations to another town or republic are deemed to constitute repressive measures. The Act restores the citizenship, the titles and/or the rights of citizens of the Republic who have suffered from those repressive methods. It grants, inter alia, material and professional privileges to persons repressed during the Soviet period and to their families.

INFORMATION RELATING TO EACH ARTICLE OF PART I OF THE CONVENTION

Article 2

10. The Armenian legal system and the regulations governing the operation of judicial institutions lay down conditions conducive to the effective prevention of any resort to torture or other inhuman or degrading treatment in the territory of the Republic of Armenia.

11. Article 14 of the Code of Penal Procedure prohibits the obtaining of testimony through the use of violence, threats or illegal means. In order to broaden the scope of prohibition of such acts, the draft new code of penal procedure further stipulates that "the use of such methods is prohibited for all law enforcement officials and witnesses".

12. Article 21 of the new Constitution stipulates that: "No one shall be subjected to torture, inhuman or degrading treatment or punishment". Since the term "torture" is defined neither in the Constitution nor in the relevant legislative texts, the definition contained in the Convention must be regarded as valid in Armenia since the entry into force of the Convention.

13. The Penal Code of the Republic of Armenia makes provision for invocation of the liability of public authorities which, in the discharge of their duty, cause detriment to the life, health, rights or interests of citizens. Any official who uses the privileges of his office to cause detriment to the rights or interests of citizens is liable to a penalty of two to eight years' imprisonment (art. 182 of the Penal Code).

14. The draft new penal code envisages numerous additional guarantees providing for compliance with the provisions of the Convention. The Constitution stipulates that: "Everyone has the right to life. The death penalty shall be applied only in the case of the most serious offences and until a decision is taken to abolish it completely". In conformity with

the Constitution, the draft penal code makes provision for a general liberalization of sanctions and limitation of the application of the death penalty.

15. The draft code of penal procedure seeks to protect the rights of accused persons. In particular, it will contain precautionary measures to reinforce the principle that the accused must be presumed innocent until proved guilty, by a competent court, in accordance with the law. Likewise, the draft will stipulate that an accused person held in pre-trial detention may be subjected only to the restrictions provided for in the preventive measures. According to the draft, pre-trial detention must not involve any form of punishment.

Article 3

16. The legislation of the Republic of Armenia makes no legal provision for cases of extradition. According to article 19 of the Code of Penal Procedure, relations between the courts, judges, prosecutors, investigators and pre-investigation bodies of the Republic of Armenia, on the one hand, and those of foreign States, as well as the procedure for investigation in cooperation with foreign institutions, are determined on the basis of bilateral conventions signed with the States concerned. Under that provision, extradition is regulated by a convention signed between Armenia and the State concerned. A bilateral convention of that type has recently been signed between the Republic of Armenia and Bulgaria.

17. On 27 September 1993, the Parliament of the Republic of Armenia adopted a decision authorizing the Public Prosecutor of the Republic to sign extradition agreements with the prosecutors of other States.

18. On 22 June 1993, the Parliament of the Republic of Armenia ratified the Convention on Mutual Legal Aid in Civil, Family and Criminal Matters and on Judicial Relations, which was signed within the framework of the CIS.

19. The draft penal code regulates questions concerning the criminal responsibility of foreigners and stateless persons present in the territory of the Republic of Armenia, as well as that of Armenian citizens abroad. The Parliament of the Republic of Armenia has adopted, inter alia, an Act concerning the Right of Asylum and has ratified the Convention relating to the Status of Refugees.

20. It has been proposed that the future code of penal procedure should incorporate rules prohibiting the extradition of foreigners if their criminal prosecution has been terminated in the Republic of Armenia or in accordance with the legislation of the State requesting such extradition.

Article 4

21. This article constituted the motivation for the incorporation in the draft penal code of several provisions concerning the use of illegal means. Under article 194 of the draft, it is prohibited to arrest and imprison any person unlawfully or to exceed the legally specified period during which a person can be deprived of liberty. Article 195 of the draft stipulates that

any police officer who threatens to use a firearm or physical or mental ill-treatment, including torture, with a view to obtaining statements or explanations is liable to a penalty of up to five years' imprisonment.

22. The draft protects persons serving custodial sentences by recognizing the responsibility of public authorities which tolerate ill-treatment of persons who are detained or incarcerated.

Article 5

23. The Penal Code in force in the Republic of Armenia stipulates that Armenian criminal law applies to the perpetrators of offences committed in the territory of the Republic of Armenia and on aircraft.

24. The criminal responsibility of diplomats present in the territory of the Republic of Armenia is regulated through the diplomatic channel.

25. Under the bilateral conventions signed by the Republic of Armenia, Armenian criminal law applies to Armenian nationals who have committed offences abroad only if criminal proceedings have been instituted against them and if they have not served their sentence for the same offence in accordance with a judgement of the foreign State.

Article 6

26. The Code of Penal Procedure of the Republic of Armenia establishes the rules for the institution of criminal proceedings. Preliminary proceedings are instituted if there is a justified suspicion that an offence has been committed. During these proceedings, it is permissible only to carry out a preliminary investigation at the scene of the offence.

27. It has also been proposed that pre-investigation, as a means of preliminary investigation, should be abolished in the draft new code of penal procedure. It is planned to combine the pre-investigation bodies, namely the investigators of the Department of Public Prosecutions, the Ministry of Internal Affairs and the Department of State for National Security, in a single committee which would be incorporated in the Government.

28. The Code of Penal Procedure specifies the grounds and procedure for the remand in custody of accused persons (arts. 111 and 112), as well as the procedure for the indictment of persons suspected of committing an offence.

29. For this reason, the draft code of penal procedure recognizes the right of the accused to contest the legality of his remand in custody, as well as any prolongation of its duration.

30. The Constitution emphasizes the fact that no one can be incarcerated except by decision of a court. In order to ensure that this provision is respected, it is planned to introduce the system of examining magistrates. The examining magistrate would not form part of the judiciary but would act in his capacity as a member of the body competent to conduct preliminary examinations. Hitherto, the right of deprivation of liberty has been vested in the Government Procurator. However, under this system, the principle of

the objectivity of the public prosecutor is called into question in view of the fact that it is he who orders remand in custody, presides over the interrogation, makes a case for culpability and defends the public interest before the court. Accordingly, the Constitution makes provision for a far-reaching reform of the investigation procedure and the following stages of criminal prosecution by clearly separating the three judicial functions, namely prosecution, defence and judgement.

31. Every case in which a foreign national is held in custody is promptly notified to the diplomatic representatives of his country.

Article 7

32. In accordance with the Code of Penal Procedure of the Republic of Armenia, anyone who has knowledge of the commission of a legally punishable offence has an obligation to duly notify the public prosecutor, a criminal investigation officer, the police or the court. The latter, acting within the limits of their competence, take into consideration the declaration in question and institute legal proceedings. Failure to notify those bodies after learning of the commission of a legally punishable offence is sanctioned, under article 206 of the Penal Code, by a penalty of up to three years' imprisonment. However, under the draft penal code, the members of the offender's family are absolved from criminal responsibility in this regard. Public establishments and non-governmental organizations which, in the course of their activities, come to know of the commission of a legally punishable offence have an obligation to duly notify law enforcement officials.

33. The investigating body, the examining official and the public prosecutor have an obligation, within the limits of their competence, to institute proceedings in respect of such legally punishable offences.

34. In accordance with articles 108 and 109 of the Code of Penal Procedure, pre-investigation bodies have an obligation to institute proceedings not only in the case of offences in respect of which a pre-investigation must be conducted but also in the case of offences the hearing of which is terminated after a pre-investigation.

35. The Government Procurator has the right to annul decisions taken by pre-investigation and examining bodies in criminal matters. When the proceedings are instituted by a court, the public prosecutor has the right (under arts. 102, 246, 247 et seq.) to appeal against those decisions.

36. The draft code of penal procedure, by adopting the concept of the court as the body responsible for the administration of justice, will annul the rights of the court and of the judge to institute proceedings. The court should not have a prosecuting function but should merely determine culpabilit and, if appropriate, decide on the corresponding penalty.

37. In all cases, the rules of the Code of Penal Procedure are applied in such a way as to ensure that the person being prosecuted enjoys all the statutory safeguards at the stages of police investigation, examination and judgement without any discrimination and regardless of his nationality.

Article 8

38. Following its signature of the Convention, Armenia signed a Convention on Mutual Legal Aid in Civil, Family and Criminal Matters and on Judicial Relations, which also covered questions of extradition, with the States of the CIS. The contracting parties undertook to hand over, on a reciprocal basis and in accordance with the rules laid down in the articles of the Convention, individuals facing prosecution in connection with an offence or whom the judicial authorities of the party requesting extradition were seeking for the purpose of enforcing a penalty. Extraditable offences are those punishable, under the laws of the party submitting or receiving the extradition request, by a penalty of not less than one year's imprisonment. If the person concerned has already been sentenced to a penalty in the territory of the party requesting the extradition, the said penalty must be for a period of not less than six months.

39. A similar convention has recently been signed between Armenia and Bulgaria.

Article 9

40. The Code of Penal Procedure currently in force does not contain any rules concerning an exchange of mutual legal aid with law enforcement officials in foreign States. However, article 122 settled the problem of mutual aid among examining magistrates of the former Soviet Union for the examination of some offences. The Convention on Mutual Legal Aid in Civil, Family and Criminal Matters and on Judicial Relations lays the foundations for mutual legal aid among the States of the CIS.

41. The new code of penal procedure will contain provisions permitting mutual legal aid among examining magistrates and courts through international conventions.

42. The new code of penal procedure will also contain provisions concerning foreign witnesses or experts summoned from abroad who appear voluntarily before the courts. It will not be permissible to prosecute such persons or to hold them in custody or preventive detention for the offence forming the subject of the criminal proceedings.

Article 10

43. The monthly legal journal "Law and legality" has published several of the international instruments concerning human rights, particularly the rights of suspects and accused or convicted persons. Examples of such instruments are:

The Code of Conduct for Law Enforcement Officials (1992);

The Basic Principles on the Independence of the Judiciary (1992);

Safeguards guaranteeing protection of the rights of those facing the death penalty (1994).

44. The information contained in that legal journal is available to law enforcement officials and to students at the Faculty of Law of the State University of Erevan.

45. The Republic of Armenia is planning to pursue a policy of integrating human rights into the teaching and training of some members of the judiciary and security personnel.

Article 11

46. The draft penal code will modify the conditions governing the imposition and enforcement of custodial penalties. The draft will specify the rights and obligations of the complainant while, at the same time, respecting the rules laid down by the United Nations, namely segregation of detained minors, women and perpetrators of unintentional offences, strengthening of the role of the judge and diminution of that of the public prosecutor in regard to enforcement of penalties, and improvement of prison conditions.

47. Questions concerning the procedure for, and duration of, custody, pre-trial detention and examination and the time-limits for the lodging of appeals are currently regulated by the Code of Penal Procedure. Under article 82 of the Code, police custody cannot exceed 72 hours, although this period may be extended up to 30 days for reasons to do with technical difficulties. Pre-trial detention cannot exceed three months. However, on the expiry of that time-limit, the Government Procurator may extend it by a substantiated decision (art. 83 of the Code of Penal Procedure).

48. The accused is convicted if found guilty on the charge brought against him. He has the right to be informed of the charge, to furnish explanations and proof, to have a lawyer for his defence (art. 13 of the Code of Penal Procedure) and to lodge a complaint against the investigating officials as well as the public prosecutor and the court. The accused has the right to be heard last.

49. The Government Procurator has an obligation to ensure that all the preparatory procedures are duly observed. As soon as the preparatory procedures have been concluded, the matter is referred to the public prosecutor, who has the right to confirm or annul the preliminary conclusions of the police investigation. Once the conclusions have been confirmed by the public prosecutor, the matter must be referred to the court.

50. In order to safeguard the rights of the accused and put into effect the provisions of the International Covenant on Civil and Political Rights, the Parliament of the Republic of Armenia has promulgated legislation amending some articles of the Code of Penal Procedure. Under the terms of the Act of 11 May 1992, embezzlement is no longer a capital offence.

51. In accordance with those amendments, a level of appeal was established within the Supreme Court in order to enable persons who have been judged by a division of first instance at the Supreme Court to lodge an appeal against that judgement at a second level established within the Court. That division

of second instance consists of three judges of the Court. In recent years, experience has shown that this change was beneficial, particularly for the rectification of several legal judgements.

52. The conditions of pre-trial detention and the treatment of detainees are constantly monitored by the Ministry of the Interior, the Office of the Government Procurator and the Ministry of Justice.

Articles 12 and 13

53. Anyone claiming to have been subjected to acts of torture or other inhuman or degrading treatment during the preparatory procedures has the right to lodge a complaint with the Office of the Government Procurator. Any detainee who has suffered similar treatment at places of detention has the right to lodge a complaint initially with the prison administration and subsequently with the Government Procurator.

Article 14

54. When cases of ill-treatment and acts of torture are found to have occurred, the victim has the right to compensation, under the conditions of civil liability, in proportion to the detriment suffered. Under the legislation of the Republic of Armenia, persons who have been convicted, detained or imprisoned unjustly are entitled to compensation. In accordance with the regulations promulgated by the Presidium of the Supreme Soviet of the former Soviet Union on 18 May 1981, the State indemnifies citizens who are victims of such acts. In the event of the victim's death, the right to indemnity devolves on his successors.

55. The Act concerning Victims of Repression of 14 June 1994 lays down the rules for the definition and compensation of persons who were subjected to repression during the Soviet period since 1920. Citizens of the former Soviet Union, stateless persons and foreign citizens who, due to their political activities, suffered from the repressive measures mentioned below during the Soviet period are regarded as victims of repression:

(a) Conviction under articles 65, 67, 69 and 206 of the 1961 Penal Code of the former Soviet Union or under similar articles of the 1927 Penal Code which were intended to prevent any dissident political opinion;

(b) Invocation of criminal responsibility without a judicial decision;

(c) Illegal subjection to medical treatment;

(d) Exile from the territory of the former Soviet Union or deprivation of nationality;

(e) Exile as a member of the family of a repressed person.

That Act regulates compensation and reinstatement of the civil and political rights of victims of repression during the Soviet period.

Article 15

56. The Code of Penal Procedure contains detailed regulations concerning the questioning of witnesses, defendants, suspects and accused persons. It lays down a procedure that enables such persons to speak freely within the limits defined by the subject-matter of the article.

57. Under article 193 of the Penal Code, confessions obtained through the use of torture or other inhuman or degrading methods cannot be invoked as evidence in proceedings. A person responsible for such acts is liable to a penalty of up to three years' imprisonment.

58. Under article 56 of the Code of Penal Procedure, statements or declarations obtained in a manner contrary to the provisions of the Code of Penal Procedure are inadmissible as evidence.

59. The decision of the plenary Supreme Court "concerning judicial practice in regard to the application of the legislation guaranteeing the rights of defence of suspects and accused persons" prohibits the interrogation of witnesses on questions that are likely to imply their involvement in the offence. A person who has been indicted cannot be questioned as a witness.

Article 16

60. The Penal Code contains a special chapter on offences committed against the system of justice. It is an offence to arrest, imprison or treat any person in an arbitrary manner or in such a way as to infringe individual liberty.

61. Through the proposed amendments to the Penal Code and the Code of Penal Procedure, the Armenian legal system will be based entirely on the desire to fully protect citizens and foreigners living in the territory of the Republic of Armenia from torture and all forms of cruel, inhuman or degrading treatment or punishment.